

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

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SHAWN CHEEVER,)	
)	
Plaintiff,)	
)	SECOND AMENDED
-against-)	COMPLAINT
)	
)	DOCKET NO. 1:06-cv-351[JM]
NEW HAMPSHIRE CORRECTIONS)	
SERGEANT MICHAEL EDMARK,)	
CORPORAL KEVIN VALENTI,)	
CORRECTIONS OFFICERS, "JOHN")	
VALENCIA, AND "JOHN AND JANE DOES,")	
)	
Defendants.)	
-----)	

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff, SHAWN CHEEVER, seeks relief for the defendants' violation of his rights secured by the Civil Rights Act of 1871, 42 U.S.C. § 1983, of rights secured by the eighth and fourteenth amendments to the United States Constitution, and of rights secured under the laws and constitution of the State of New Hampshire. The plaintiff seeks damages, both compensatory and punitive, affirmative and equitable relief, an award of costs, interest and attorneys' fees, and other and further relief as this Court deems just and equitable.

JURISDICTION

2. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (4), this being an action seeking redress for the violation of plaintiff's constitutional and civil rights.

3. Jurisdiction is also invoked herein pursuant to the eighth and fourteenth amendments to the United States Constitution and 42 U.S.C. § 1983.

4. The plaintiff requests that this Court exercise supplemental jurisdiction over any state court cause of action that arise from a common nucleus of operative facts that give rise to the federally based causes of action pleaded herein. 28 U.S.C. § 1367.

JURY TRIAL DEMANDED

5. Plaintiff demands a trial by jury on each of the causes of action pleaded herein.

VENUE

6. Venue is proper for the United States District Court for the District of New Hampshire pursuant to 28 U.S.C. § 1391(b).

PARTIES

7. The plaintiff, SHAWN CHEEVER, at all times relevant herein, was a resident of the State of New Hampshire, housed at The Special Housing Unit (SHU) of the New Hampshire State Prison for Men in Concord, New Hampshire. He is no longer in custody, and resides in the State of Florida.

8. Defendants EDMARK, VALENTI, VALENCIA and JOHN and JANE DOES were, at all times relevant herein, acting under color of state law as officers, employees and agents of the Department of Corrections of the State of New Hampshire. These defendants are being sued individually and not in their official capacity.

AS AND FOR A FIRST CAUSE OF ACTION:
CIVIL RIGHTS VIOLATION AGAINST
DEFENDANTS MICHAEL EDMARK, KEVIN VALENTI,
“JOHN” VALENCIA and “JOHN AND JANE DOES”

9. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 8 above as is fully set forth herein.

10. On or about December 20, 2003, the plaintiff was incarcerated at the New Hampshire State Prison for Men in Concord and was being transferred to SHU. Upon his arrival at SHU, he was very distraught and was unable to stop crying.

11. As a reaction to the crying of the plaintiff, defendants EDMARK, VALENTI, VALENCIA, and JOHN AND JANE DOES, taunted, harassed and psychologically abused the plaintiff. Additionally, said defendants, both before and after said plaintiff was handcuffed, physically assaulted and battered the plaintiff by repeatedly striking him in the torso and ribs, slamming his head against the wall, causing plaintiff to lose consciousness, smacking his face into the floor and strapping the plaintiff naked to a “flat chair.”

12. As a result of the foregoing incident, plaintiff received numerous physical and emotional injuries causing the plaintiff pain and suffering.

13. The conduct and action of defendants, EDMARK, VALENTI, VALENCIA, and JOHN AND JANE DOES, acting under color of state law, was not done in good faith and was done intentionally, maliciously, and sadistically, with a deliberate indifference to the rights of the plaintiff, and was done unnecessarily and wantonly with the purpose of causing harm and inflicting pain, in violation of plaintiff’s constitutional rights as guaranteed under 42 U.S.C. §1983 and the eighth and fourteenth amendments to the United States Constitution.

14. Additionally, all correction personnel at the scene owed a duty to the plaintiff to intervene on his behalf to prevent the constitutional violations set forth above.

15. In violation of that duty, defendants EDMARK, VALENTI, VALENCIA, and JOHN AND JANE DOES failed to intercede.

16. The breach of that duty articulated above was a proximate cause of the injuries and constitutional deprivations set forth above.

AS AND FOR A SECOND CAUSE OF ACTION:

SUPPLEMENTAL STATE CLAIMS AGAINST ALL THE DEFENDANTS

17. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 16 above as is fully set forth herein.

18. The conduct of defendants EDMARK, VALENTI, VALENCIA, and JOHN AND JANE DOES alleged herein occurred while they were on duty, and in and during the course and scope of their duties and functions as State of New Hampshire correctional officers.

19. Pursuant to N.H.R.S.A. 541-B:14, the plaintiff, by certified mail, return receipt requested, gave notice to the Commissioner of the New Hampshire Department of Corrections of this claim.

20. By the actions described above, the defendants individually and collectively, have committed the following wrongful acts against the plaintiff:

- a. Assault on the person of the plaintiff, SHAWN CHEEVER;
- b. Battery on the person of the plaintiff, SHAWN CHEEVER;
- c. Intentional and negligent infliction of emotion distress on the plaintiff, SHAWN CHEEVER; and
- d. Violation of the rights otherwise guaranteed to the plaintiff under the laws and constitutions of the State of New Hampshire and the United States.

WHEREFORE, the plaintiff demands the following relief jointly and severally against all of the defendants:

- A. Compensatory damages;
- B. Punitive damages;
- C. Enhanced compensatory damages;
- D. The convening and impaneling of a jury to consider the merits of the claims herein;
- E. Costs and interest and attorney's fees; and
- F. Such other and further relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

Dated: March 18, 2008
Manchester, New Hampshire

/s/ Lawrence A. Vogelmann
LAWRENCE A. VOGELMAN (10280)
Nixon, Raiche, Vogelmann, Barry & Slawsky, P.A.
77 Central Street
Manchester, NH 03101
(603) 669-7070
E-mail: vogelmanlarry@yahoo.com
Attorneys for the Plaintiff,
SHAWN CHEEVER